Oregon
Kate Brown, Governor

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Christine Psyk
EPA Region 10
1200 SW 6th Ave.
Seattle, WA 98101

Dear Ms. Psyk,

During recent discussions about Oregon's 2012 Integrated Report (submitted), EPA asked for clarification regarding the state's dissolved oxygen water quality standards. In addition, EPA has requested that DEQ agree to clarify the terminology and application of dissolved oxygen criteria to cold-water, cool-water and warm-water aquatic life in the state's administrative rules. These, in addition to spawning, are the fish and aquatic life use subcategories used in the state's dissolved oxygen standards.

Oregon's dissolved oxygen standards for fish and aquatic life were last revised in 1996. The standards includes criteria for spawning, cold-water aquatic life, cool-water aquatic life and warm-water aquatic life, as well as estuarine and ocean waters. The descriptions of these use subcategories are provided in Table 21 (OAR 340-041) and in the Dissolved Oxygen Issue Paper (DEQ, 1995, p. 2-7). The dissolved oxygen aquatic life subcategories used a waterbody community approach rather than a species approach.

Oregon also revised its temperature standards in 1996. The temperature standards also include criteria for aquatic life use subcategories. However, the temperature standards use a species approach, resulting in different subcategories. This was done in part due to the importance of temperature in determining the suitability of the habitat for various species and in part due to growing concerns at the time about the threatened and endangered status of increasing numbers of salmon and steelhead populations.

In subsequent years, focusing on temperature, additional revisions were made in the rule definitions and fish and aquatic life use maps were adopted for the use subcategories in the temperature standard. This has created some ambiguity in the water quality standards rules that make it unclear based on the rules alone how the dissolved oxygen criteria are to be applied. DEQ provided EPA interpretive memos in 1998 and 2004 explaining how the state would implement the DO standard, as well as an update in 2010. DEQ has been consistently applying the standard according to these descriptions. In particular, DEQ has consistently used the ecoregion method described in the 1998 memo from that time until the present to determine where cool-water aquatic life communities and cold-water aquatic life communities occur for the purpose of applying the appropriate criteria in 303d assessments, TMDLs and permits.

DEQ acknowledges that the public would benefit from clarifications in the water quality standards rules related to the dissolved oxygen use subcategory definitions and where the subcategories occur. Therefore, DEQ is committed to completing a rulemaking to provide this clarification by the end of 2017 or by the next 303d list submission, whichever is soonest. In addition, during this process DEQ will provide information on the relationship between the DO standards use subcategories and the maps that identify the location of the use subcategories used in the temperature standard. The goal will be to provide to the public clear information on what DO criteria apply at any given waterbody location and time period.

Please understand that DEQ intends this rulemaking to be a non-substantive clarification of our current dissolved oxygen standards and application, not a revision of the standards. A water quality standard is the use and the criteria designed to protect that use and state standards for a pollutant may include multiple criteria associated with different use subcategories. DEQ believes that the ecoregion approach for identifying cool versus cold water aquatic life communities is a reasonable approach based on readily available information on a statewide scale.

It is DEQ's hope that EPA will support the state to accomplish these clarifications in an efficient and timely manner, with minimal uncertainty about the fate of the resulting revisions. Dissolved oxygen is an important parameter for permitting and long periods of uncertainty or delays in EPA action could impede the timely completion of NPDES permits.

My staff and I look forward to working with you to improve the clarity of our water quality standards rules for dissolved oxygen. Please let us know if you have questions or would like to discuss this issue further.

Sincerely,

Jennifer Wigal, Program Manager
Water Quality Program

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